THE HON'BLE SRI JUSTICE
GODA RAGHURAM
And
THE HON'BLE SRI JUSTICE
S. ANANDA REDDY

W.P.No.19687 of 2004

Dated: 08-06-2007

Between:

S. Tyagaraju

…Petitioner

And

Hon'ble High Court of Andhra Pradesh,
Rep., by its Registrar (Admn.,) Hyderabad
and eight others.

…Respondents

THE HON'BLE SRI JUSTICE
GODA RAGHURAM
And
THE HON'BLE SRI JUSTICE
S. ANANDA REDDY

W.P.No.19687 of 2004

Oral Order: (Per: The Hon'ble Sri justice Goda Raghuram)

The writ petition is filed with the prayer as under:

"…to declare the proceedings No. ROC No.3033/2003, Ci-(1) dt. 16-09-2004 of the 1st

respondent herein confirming the order dt. 14-08-2003 by the 2nd respondent as illegal, arbitrary and consequently direct the 2nd respondent herein to restore the seniority of the petitioner above the respondents 3 to 9 with all consequential benefits".

By a common order dated 04-09-2000 of the second respondent, the petitioner and respondent Nos. 3 to 9 were promoted and posted to serve as Upper Division Clerks (for short 'UDC') in Category 4 Division-IV of the Andhra Pradesh Judicial Ministerial Service governed by the Andhra Pradesh Judicial Ministerial Service Rules, 1964 (for short 'the Rules'). In the order dated 04-09-2000, the *inter se* position of the petitioner and the respondent Nos. 3 to 9 is as under:

The 6th respondent herein No.1; Petitioner No.2; the 5th respondent No.3; the 9th respondent No.4; the 3rd respondent No.5; the 4th respondent No.6; the 7th respondent No.7 and the 8th respondent No.8.

According to the petitioner, in the feeder category of Clerks, Typists and Steno-typists in Category-5 of Division –IV from which the petitioner and the party respondents were considered and appointed on promotion as UDCs, the petitioner was senior to these respondents as per the common seniority list dated 02-03-1994. That the petitioner was senior to the respondent Nos. 3 to 9 in the common seniority list in the feeder category to the post of UDCs is not in dispute.

After the petitioner and the party respondents were promoted by the common proceedings dated 04-09-2000 as UDCs, on 01-07-2001 a gradation list in the category of UDCs was prepared and circulated to all the concerned whereat the petitioner figured at serial No.35 and the party respondents, except the 6th respondent were arrayed below the petitioner. Insofar as the 6th respondent is concerned, he was shown above serial No.35 in the gradation list dated 01-07-2001. A revised gradation list was issued on 01-07-2002 whereat the respondent Nos. 3 to 9 were arrayed at serial Nos. 33 to 39 and the petitioner below them at serial No.40. On account of such diminution of *inter se* seniority and ranking, the petitioner feeling aggrieved has filed this writ petition seeking the relief already adverted to above.

On behalf of the respondents, a counter affidavit has been filed by the second respondent. In the counter it is admitted that the petitioner and the party respondents were promoted as UDCs by a common order dated 04-09-2000. It is contended however that the petitioner and the party respondents joined the post of UDCs on several dates despite a common order of posting. The petitioner joined on 23-09-2000 and the party respondents joined earlier. According to the counter, seniority in the post of UDCs was fixed by taking the date of their respective joining the post as the criterion and consequently the petitioner was considered as junior to the party

respondents in the gradation list dated 01-07-2002.

The petitioner lodged a representation against the diminution of his seniority and ranking to the High Court. The first respondent by the order dated 16-09-2004 rejected the petitioner's representation on the ground that t h e *inter se* ranking of the petitioner and party respondents is determined in accordance with the Rule 27-A of the Rules. Rule 27-A bears the marginal heading '*Special provision in respect of probation and seniority in certain cases*'. However, the Rule proper does not enact any principle of determination of seniority. It reads:

> "*Notwithstanding anything contained in these rules, a person promoted or appointed by transfer on or after 23rd January, 1969 to a division, category or grade of the service, shall be deemed to have commenced his probation in that division, category or grade from the date on which he has been continuously on duty in that division, category or grade for a period of not less than two months from the date of promotion or appointment by transfer*."

In any event, Rule 34 of the Rules sets out the principles for determination of seniority. Rule 34 (1) enjoins that the seniority of a person in a division, category or grade of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to a category. If any portion of the service of such person does not count towards probation under Rule 16 (4) or 40 (4), his seniority

shall be determined by the date of commencement of his service which counts towards probation. Sub-rule (2) of Rule 34 of the Rules enacts that the appointing authority may, at the time of passing of an order appointing two or more persons simultaneously to a category of service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason, the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

Facially, Rule 34 (1) appears to deal with a situation where one individual has been appointed to a category. In case of plural appointments, Rule 34 (2) applies. In the order dated 04-09-2000 the petitioner and party respondents are arrayed hierarchically as already mentioned supra in this judgment. Accordingly, the petitioner ranks below the sixth respondent but above the other respondents. Note-I to the order dated 04-09-2000 states that the seniority of P.V. R Sudhakar (the sixth respondent) is placed at serial No.1 as per the decision of the Administrative Tribunal in RP. 22639 of 1989 dated 02-01-1995. Though the order dated 04-09-2000 is not wholly clear as to whether the *inter se* arrangement of names of the petitioner and party respondents is indicative of an order of preference by the second respondent, from Note-I to the order it could be reasonably inferred that the *inter se* arrangement of names is the order of preference amongst them.

Since the ranking of the petitioner and the party respondents on the aforesaid analysis is discernable from the order dated 04-09-2000 which is a common order appointing and posting the petitioner and party respondents to the post of UDC and since it is an order of preference *inter se,* determined by the second respondent, who is the competent authority, it is the *inter se* seniority in accordance with the amended Rule 34 of the Rules. The revised gradation list of UDCs dated 01-07-2002 which is contrary to such *inter se* seniority is unsustainable and is so declared *protanto*. Consequently, the seniority of the petitioner and the party respondents in the category of UDCs shall be in accordance with the *inter se* seniority set out in the order dated 04-09-2000 of the second respondent. The second respondent shall issue a revised gradation list in the category of UDC in accordance with this judgment.

The writ petition is allowed as above, but in the circumstances without costs. The parties shall be entitled to the consequential benefits on the basis of the seniority positions as reflected in such revised gradation list.

_____

GODA RAGHURAM, J

_____

S. ANANDA REDDY, J

Dated: 08-06-2007
Pvks/*